

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

In the Matter of:

PREMERA BLUE CROSS CONVERSION

R03-07

Order No. 3 - Intervention

Pursuant to the director's order of August 5, 2003, any person wishing to participate in the above-captioned matter as a party was given an opportunity to file a motion or request to intervene. The motion or request was to include a memorandum and supporting affidavit setting forth the factual and legal basis for intervention. Notice of Opportunity to Intervene was published in Alaska and Seattle newspapers.

The director has received motions to intervene from the following: Theresa Nangle Obermeyer; Anchorage Neighborhood Health Center; United Way of Anchorage; John Garner, by and through Barbara Garner, and the University of Alaska. Premera and the division staff oppose these motions. For the reasons stated herein, I deny the motions for intervention, but I grant status as amicus curiae to each of the proposed intervenors.

Interests of Proposed Intervenors

1. Theresa Nangle Obermeyer: Mrs. Obermeyer's interest is based on her status as a beneficiary of a PBC subscriber plan issued to her husband Thomas Obermeyer.

2. Anchorage Neighborhood Health Center (ANHC): ANHC is a non-profit organization that provides medical and dental services to individuals who have benefits through Medicaid, Medicare, and public and private insurance or who are uninsured. ANHC claims an interest in the conversion based on the following:

- ANHC provides services to patients insured by PBC.
- ANHC is a PBC preferred provider and each ANHC physician is enrolled in PBC's Network Providers Group.
- ANHC is a PBC enrollee, providing healthcare coverage to its employees through PBC.
- There is a potential for rate increases that may impact its ability to obtain affordable, quality health care for its employees or that may reduce ANHC's reimbursement for services because patient coverage decreases.
- There is potential that ANHC will not be able to negotiate its service rates to meet the increased costs of care.

- ANHC and its patients may benefit from the creation of a health care organization that will be funded as a result of the conversion
- ANHC (and other proposed intervenors) have financially contributed to the development of PBC's charitable assets.

3. United Way of Anchorage: United Way is a non profit charitable organization that has 50 partner agencies. It helps fund and strengthen programs promoting health initiatives in Alaska. United Way claims an interest in the conversion based on the following:

- Several of its partner agencies provide direct and indirect health care services.
- The value of United Way's disbursement funds will be diminished if upon conversion the full value of PBC's assets are not made available to Alaskans. If PBC decreases coverage, United Way partner agencies will need to seek additional United Way funds to maintain current level of health care services they provide. If this happens, then United Way may have to decrease funding to other critical areas to maintain the value of funding it provides for health care services.
- United Way will benefit from creation of a charitable organization to address healthcare, which will increase the value of United Way's funding efforts, will allow its partner agencies to receive grants, will free up United Way resources to fund other community missions.
- United Way supports and fosters health care related services and initiatives and may seek to partner with the Alaska charitable organization that is created as a result of the conversion.

4. University of Alaska (UA): UA is one of the largest employers in the state and claims an interest in the conversion based on the following:

- PBC administers the health care claims of UA's employees.
- UA pays for employee health benefits and employees contribute to the cost of health care benefits.
- If the conversion is approved, UA and its employee will be affected by changes in availability and rates.
- UA plays a dominant role in training and educating key health professions. If conversion is approved, UA has an interest in seeing that proceeds are distributed towards improving availability of quality health care and addressing unmet personal and public health care needs of Alaskans.

5. John Garner: Mr. Garner is a low-income developmentally disabled person who requires constant health care. He is covered by Medicare, Medicaid, and private insurance. He claims an interest based on the following:

- The conversion may have an impact on the affordability of quality health care if competition is lessened and rates increase.
- He is a former PBC insured and claims to be a potential beneficiary of PBC assets.

Standard for Intervention

Under AS 21.06.210(b), a person may become a party to this proceeding by filing a timely request or motion to intervene establishing that the person's "pecuniary interests are to be directly and immediately affected by the director's order made upon the hearing." Therefore, the final order issued by the director on the Premera conversion must have a direct and immediate affect on a moving person's pecuniary interests.

Pecuniary interest is not specifically defined in the insurance code, but the dictionary defines "pecuniary" as "of or involving money." Webster's New World Dictionary (Second College Edition, 1976), p. 1046.¹ Similarly, Black's Law Dictionary defines "pecuniary" as "[m]onetary; relating to money; financial; consisting of money or that which can be valued in money." Accordingly, a person's interest must be monetary or capable of being valued in money for purposes of intervention. But case law suggests that there should be no minimum threshold on the magnitude of a monetary interest. See *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Penn. 1982) (discussing pecuniary interest for purposes of standing to challenge government action).

"Direct" is defined to mean "with nothing or no one in between; immediate; close, first-hand, or personal." Webster's New World Dictionary (Second College Edition, 1976), p. 399. In standing cases, "direct" requires an aggrieved person to show a causal connection between an alleged harm to his or her interest and the matter about which the person complains. *Wm Penn Parking Garage, Inc.*, 346 A.2d at 282. Harm to an interest is direct if the relief sought by a person would eliminate the harm. 346 A.2d at 289. Stated differently "direct" is interpreted as something that is not speculative, theoretical, inconsequential, or remote. *American Surety Co., et al v Jones*, 51 N.E.2d 122, 126 (Ill. 1943). See also *Ginther v. Commissioner of Insurance*, 693 N.E.2d 153, 157 (Mass. 1998) (generalizations and fears about future events are not sufficient to show direct injury from a commissioner's order for purposes of standing).

"Immediate" is defined to mean "having nothing coming between; with no intermediary;" "not separated in space; in direct contact; closest; nearest; also close by;" "not separated in time; acting or happening at once; without delay, instant." Webster's New World Dictionary (Second College Edition, 1976), p. 701. Accordingly, a very close causal connection between a challenged action and an asserted injury to a pecuniary interest is required to qualify it as being "immediately affected." See *Wm Penn Parking Garage, Inc.*, 346 A.2d at 286.

In standing cases, the goal of requiring "direct and immediate" interest in the outcome of a matter is to distinguish it from a general or common interest of the public. *Nader v. Altermatt*, 347 A.2d 89, 94 (Conn. 1974). In that regard, the interest must be specific and personal to the person asserting standing. *Id.*

¹ In absence of a statutory definition, it is appropriate to look to a word's common meaning. *Hayes v. A.J. Associates*, 960 P.2d 556, 564 (Alaska 1998).

Discussion

The division staff and PBC have opposed the motions for intervention, each asserting that the proposed intervenors have failed to show that they have any pecuniary interest that will be directly and immediately affected by the director's order in the Form A proceeding. The division staff argues that the interests affected are tangential and speculative. PBC argues that the proposed intervenor's concerns about premium rates, provider reimbursement levels, or grants they may receive from the Alaska charitable organization established as part of the conversion fail to rise to the level of an interest that will be directly and immediately affected by an order on the conversion. In support of its position, PBC makes the following points: it is not asking for a rate change in this proceeding and, therefore, any order on conversion will not affect rates; any negotiation of provider reimbursement rates is not controlled by an order regarding the conversion; and any future grants from the charitable organization to the proposed intervenors will not be affected by the order on conversion. PBC also argues that if intervention is allowed based on the kind of interests asserted by the proposed intervenors then all PBC policyholders and providers may be entitled to intervention or at least should be given notice of the proceeding.

On the other hand, ANHC, United Way, John Garner, and UA respond that PBC's and the division's interpretation of AS 21.06.210(b) would render it meaningless and would mean that no one would qualify for intervention. The proposed intervenors (except for John Garner and Theresa Obermeyer) distinguish themselves based on size or other order of magnitude from other PBC insureds and providers or potential beneficiaries of a charitable foundation created as a result of the conversion. ANHC, United Way, and John Garner further argue that PBC's and the division's interpretation is at odds with the overall legislative intent of the insurance code to protect insurance consumers and the requirement in AS 21.22 to consider the interests of policyholders in approving an acquisition of control of or merger with a domestic insurer. To be consistent with this legislative intent, policyholders should be allowed to intervene in the Form A proceeding to provide evidence of their interests for the director to consider.

The proposed intervenors also respond that PBC's conversion to for-profit status will necessarily result in increased rates because of the need to provide returns to investors or because of anti-competitive effects of the conversion. These elements also will affect their ability to procure or maintain adequate and affordable health care coverage. And lastly, the proposed intervenors claim that they have interests in the valuation and disposition of PBC's assets. As policyholders and contract providers, they have financially contributed to the development of PBC's charitable assets and, as members of the insurance-buying public, they are potential beneficiaries of conversion assets. Accordingly, an order on conversion will directly and immediately affect these interests.

Based on the briefing and affidavits filed, I am not persuaded that any of the proposed intervenors has established a direct and immediate affect to a claimed pecuniary interest because of a director's order that might approve or disapprove the proposed conversion. For the most part, each proposed intervenor has theorized about a potential effect based on an approval of the proposed conversion that is indirect and speculative. No one has established a close causal connection between approval of the proposed conversion and actual or even probable rate

increases or impact on provider agreements. The threat of rate increases or adverse changes to provider agreements exist with or without the proposed conversion. Moreover, these interests and being able to procure and maintain affordable and adequate health care coverage are interests common to Alaskans generally.² In my view, the standard for intervention in AS 21.06.210 is intended to distinguish between the common interests of Alaskans and those interests that are specific and personal to an individual. The use of “direct and immediate” reflects the legislature’s intent to limit who may intervene in a more exacting way than by allowing intervention based on general interests or predictions about possible effects of a proposed conversion.

While I will be considering the effects of the proposed conversion on competition and on the interests of policyholders and the public, I conclude that these considerations do not abridge the standard for intervention under AS 21.06.210(b). I am persuaded that a contrary conclusion as urged by the proposed intervenors would ultimately neutralize the requirements for a “pecuniary” interest and a “direct and immediate” affect. I also am not convinced that distinguishing pecuniary interest on the basis of magnitude – the largest provider, the largest PBC customer – is appropriate if a person can establish a direct and immediate affect. In other words, if a provider, subscriber, enrollee, or beneficiary has a pecuniary interest that is shown to be directly and immediately affected by an order of the director, I am not sure the size of that interest should be determinative for purposes of intervention. But, I do not need to decide that question here, because I conclude that regardless of the magnitude of the pecuniary interest alleged by the proposed intervenors, no one has established that such interest will be directly and immediately affected by my order on the proposed conversion.

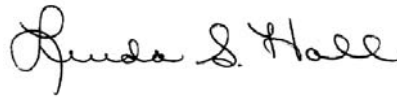
The only issue that gives me some pause is the alleged interest in PBC’s “charitable” assets. I interpret this to include PBC’s surplus that is in excess of what is required to be maintained by statute. This claim, however, was not developed by the proposed intervenors and was not responded to by the current parties to this proceeding. As a consequence, I do not have sufficient information to reach a conclusion on this point and, therefore, must decide against intervention.

I agree, however, that the interests of subscribers and providers ultimately are important considerations in PBC’s proposed transaction. I also am mindful of the important public interest in the use of the proceeds of any conversion to fund health care initiatives in this state. For these reasons, I will permit each of the proposed intervenors to participate as *amicus curiae*.

² I also agree with PBC that the proposed intervenors’ interests in promoting health care services and initiatives in the state as described in their briefing (apart from any grants that may be received) are not strictly pecuniary.

THEREFORE, IT IS HEREBY ORDERED:

1. The motions for intervention filed by Theresa Nangle Obermeyer, Anchorage Neighborhood Health Center, United Way of Anchorage, John Garner, and University of Alaska are denied.
2. Each person who moved for intervention will be granted status as amicus curiae in this proceeding, which will allow them to bring relevant matters regarding the conversion to the director's attention, urge a particular result in this proceeding, participate in briefing of any relevant issue before the director, and present written or oral testimony at public hearings that will be scheduled.
3. The parties are directed to include each person granted amicus curiae status on their service lists and to provide them with any public documents relevant to this proceeding.



Dated: November 17, 2003

Linda S. Hall
Director